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In re Application of  
Diepstraten :  
Application No. 09/213984 :  
Filing or 371(c) Date: 12/17/1998 :  
Attorney Docket Number:  
DIEPSTRATEN 19-5-5 :  
ON PETITION

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**ON PETITION**

This is a decision on the "Request to Reconsider Holding of Abandonment Under MPEP § 711.03," filed August 3, 2007. The petition is properly treated under 37 CFR 1.181(a).

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed October 31, 2003, wherein no claims were allowed. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a Notice of Appeal in response to the Office action on February 6, 2004, and a defective Appeal Brief on April 5, 2004. The Examiner issued a Communication Regarding Appeal, informing Applicant that the Appeal Brief was defective, on May 3, 2004. Applicant filed a subsequent Appeal Brief on May 21, 2004. The Examiner filed an Answer on September 8, 2004. Applicant then filed a Reply Brief on November 5, 2004. The case was set before the Board of patent Appeals and interferences ("Board"), which affirmed the Examiner in a Decision mailed April 23, 2007.

Applicant filed and this office received a Request for Continued Examination ("RCE") and Submission on June 25, 2007. A Notice of Abandonment was mailed July 3, 2007.

**Applicant's Assertion**

Applicant files the instant petition and asserts that a timely RCE and Submission were filed.

**Applicable Law, Rules and MPEP**

37 CFR § 1.114, Request for continued examination, states

- (a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
  - (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.
- (b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

37 CFR § 1.304, Time for appeal or civil action, provides

- (a) (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences.

The MPEP 1214.06 states: "The proceedings in an application or ex parte reexamination proceeding are terminated as of the date of the expiration of the time for filing court action."

#### Analysis and conclusion

In this instance, after the Board Decision, mailed April 23, 2007, Applicant was given two months before proceedings in the application terminated. Office records reveal that Applicant timely filed a RCE and Submission on June 25, 2007. Accord 37 CFR § 1.304(b).

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

No fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 2154 for processing of the RCE and Amendment, and for further examination in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

  
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